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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 561

STANDARD COMMERCIAL TOBACCO COMPANY AND STANDARD COMMERCIAL STEAMSHIP CORP., PETITIONERS,

v.

JOHN W. SNYDER, SECRETARY OF THE TREASURY, AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (R. 16A-17A) is not reported. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 26) is reported at 176 F. 2d 951.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was

entered on June 13, 1949 (R. 27). A petition for rehearing (R. 28-36) was denied on September 28, 1949 (R. 37). By order of the Chief Justice, the time for filing a petition for a writ of certiorari was extended to January 28, 1950 (R. 39). The petition for a writ of certiorari was filed on January 27, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

In partial fulfillment of her World War I obligations, fixed by the Mixed Claims Commission, Germany undertook to make certain payments to the United States to be applied on awards made by the Commission. The United States distributed these payments among American nationals, including petitioners, who had received awards. In 1931, Germany, before completing the required payments, defaulted.

The questions presented are:

1. Whether the United States may be held liable to petitioners under the Federal Tort Claims Act for judgments in amounts equal to the unpaid portion of petitioners' World War I awards.

2. If so, whether the Secretary of the Treasury may be ordered to pay such amounts out of German property sequestered by the Alien Property Custodian during World War II, notwithstanding the fact that Congress has provided for a different disposition of the sequestered funds.

STATUTES INVOLVED

1. The pertinent provisions of Sections 410, 420 and 421 of the Federal Tort Claims Act[1] are set forth in the Appendix, *infra*, pp. 19-21.

2. The English text of the Agreement of August 10, 1922, between the United States and Germany (42 Stat. 2200) is set forth in the Appendix, *infra*, pp. 21-23.

3. The pertinent provisions of Section 2 of the Settlement of War Claims Act of 1928 (45 Stat. 254), authorizing payment of Mixed Claims Commission awards out of the German Special Deposit Account are set forth in the Appendix, *infra*, pp. 24-25.

4. Section 4 of the Settlement of War Claims Act of 1928 (45 Stat. 260) as amended by the Act of August 6, 1947 (61 Stat. 789), creating the German Special Deposit Account and establishing the order of priority of payment out of that fund, is set forth in the Appendix, *infra*, pp. 25-30.

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[1] The Federal Tort Claims Act (60 Stat. 842, 28 U.S.C. 921 *et seq.*) was repealed, and its provisions were revised and reenacted into law as 28 U.S.C. 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671-2680 by the Act of June 25, 1948, effective September 1, 1948 (Pub. Law 773, 80th Cong., 2d sess.). Section 39 of the repealing act provides that existing rights and liabilities shall not be affected by the repeal. Since the case at bar arose prior to the repeal, it appears that any rights which petitioner may have against the United States herein are governed by the Federal Tort Claims Act as it existed at the time of the repeal. It is the former provisions of the Act, therefore, which are set out in the Appendix, *infra*, pp. 19-21.

STATEMENT

This suit was instituted by Katharine M. Drier in the United States District Court for the District of Columbia on February 28, 1947, on behalf of herself and persons and corporations similarly situated, under the Settlement of War Claims Act of 1928 (R. 20). Her complaint, to "Enforce Payments of Funds by the Secretary of Treasury" and for "Damages to or Loss of Property under the Federal Tort Claims Act", claimed judgment against the United States for the unpaid World War I damages she had been caused by Germany, as determined by the Mixed Claims Commission (R. 20, 25). The complaint also prayed for an order directing the respondent Secretary of the Treasury to pay her the amount of such judgment "out of the monies and properties of Germany and German nationals in his possession or under his control" (R. 25).

Petitioners, Standard Commercial Tobacco Company and Standard Commercial Steamship Corporation, being two of the "similarly situated" corporations, which had sustained World War I damages for which they had not been fully compensated, filed complaints in intervention (R. 2A-16A).

Standard Commercial Tobacco Company alleged that it holds an award of the Mixed Claims Commission in the amount of $450,000 with interest at 5% from November 11, 1918, on which there was due and owing as of October 22, 1941, on account

of principal a balance of $146,220.99,[2] and unpaid interest of $147,663.73, a total of $293,884.72, with further accruals of interest since that date (R. 3A). Standard Commercial Steamship Corporation alleged that it holds an award of the Mixed Claims Commission in the amount of $89,294.00 with interest of 5% from November 11, 1918, on which there was due and owing as of October 20, 1941, on account of principal a balance of $7,921.02[3] and interest of $12,390.86, a total of $20,311.88, with further accruals of interest since that date (R. 10A).

Each of the intervening complaints and Mrs. Drier's original complaint alleged that the actions were brought under the Federal Tort Claims Act and that the respondent Secretary of the Treasury was sued in his official capacity (R. 3A, 10A, 20). The complaints asserted that Germany had agreed to pay in full for World War I damages as deter-

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[2] This petitioner has, in fact, already received more than the $450,000.00 principal amount of its award. The alleged balance of $146,220.99 was arrived at by adding to the $450,000, interest amounting to $205,643.84, for the period from November 11, 1918, through January 1, 1928. From that total of $655,643.84, there was deducted the sums of $509,422.85 (paid over by the United States to petitioner on the principal amount of the $450,000.00 award), leaving the balance of $146,220.99.

[3] This petitioner has, in fact, also already received more than the $89,294.00 principal amount of its award. The alleged balance of $7,921.02 was arrived at by adding to the $89,294.00, interest amounting to $40,806.13, for the period from November 11, 1918, through January 1, 1928. From that total of $130,100.13, there was deducted the sum of $122,179.11 (paid over by the United States to petitioner on the principal amount of the $89,294.00 award), leaving the balance of $7,921.02.

mined by the Mixed Claims Commission; that these amounts were not fully paid; that following the 1941 declaration of war with Germany, the United States vested in itself title to properties belonging to the German Government and German nationals, and that such properties "became and still are impressed with a trust in favor of" the petitioners and others similarly situated (R. 5A, 12A, 23). Petitioners further alleged that the failure of the respondents to apply these "trust" properties to the payment of petitioners' unpaid Mixed Claims Commission's awards constituted a breach of trust actionable under the Federal Tort Claims Act (R. 6A, 13A, 24).

The complaint filed by Mrs. Drier alleged that that demand had been made by her on respondents for payment of the balance due her, but that the respondent Secretary of the Treasury refused to make such payment (R. 24). The intervening complaints made no similar demands upon either the Secretary of the Treasury or the United States, but merely alleged that, in light of the rejection of Mrs. Drier's claim by the Secretary of the Treasury, similar demands upon their part would be futile (R. 7A, 14A).

On February 10, 1948, the district court ruled that the complaints failed to state a claim on which relief could be granted and dismissed the complaints on the grounds that the "Federal Tort Claims Act does not apply, either in terms or con-

struction," and that "any purported claim of liability is specifically negatived by the provisions of the War Claims Act of 1928 (45 Stat. 254)" which provides that nothing in the Act shall be construed as the "assumption of liability by the United States for the payments of awards" (R. 16A-17A, see Appendix, *infra,* pp. 24-25). On appeal to the United States Court of Appeals for the District of Columbia the judgment of dismissal was affirmed in a *per curiam* opinion (R. 26).[4]

The genesis of petitioners' claims, though not fully disclosed in the record, is readily apparent from the official records of international arrangements made to compensate Americans whose property was confiscated by Germany during World War I. Within two months after the Joint Resolution of July 2, 1921 (42 Stat. 105) had terminated the war between Germany and the United States, a formal peace treaty, the Treaty of Berlin, was concluded. That Treaty obligated Germany "to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations or advantages" enumerated in the Joint Resolution of July 2, 1921. (42 Stat.

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[4] Mrs. Drier, the original complainant, did not seek review of the decision of the court of appeals. Petitioners were also "reluctant" to petition for writs of certiorari, but decided to file petitions after "receiving notice of the decision of this Court on December 12, 1949, in the cases of United States v. Aetna Casualty Co. * * *" [No. 35, this Term]. See p. 3 of Petitioners' "Motion to Extend Time for Filing Petition for Writ of Certiorari" and p. 1 of the Affidavit attached to the motion.

1939, 1942). In order to determine the amount to be paid by Germany in satisfaction of her financial obligations to the United States under the Treaty of Berlin, an agreement was made between the two Governments on August 10, 1922 (42 Stat. 2200), providing for the establishment of a Mixed Claims Commission.

The Commission consisted of three members, one appointed by the United States, another by Germany, and an umpire, selected by the two Governments, who decided "any cases concerning which the commissioners" disagreed. 42 Stat. 2201. More than 20,000 claims were presented by the United States to the Commission, which entered a total of 7,025 awards. Final Report of H. H. Martin, Acting Agent of the United States before the Mixed Claims Commission (1941), p. 94.

In 1928 Congress passed the Settlement of War Claims Act (45 Stat. 254) establishing the fund known as the German Special Deposit Account out of which the Commission's awards to the United States on behalf of American nationals were to be paid. The Act provided that 20% of the seized property of World War I German nationals, together with funds contributed by Germany for the payment of the awards, should be paid into the Special Account. It further provided for the return to German nationals of the remaining 80% of the seized property which the United States then held for the protection of the American awards.

On June 23, 1930, in accordance with the provisions of the Debt Funding Agreement between Germany and the United States pursuant to the Act of June 5, 1930 (46 Stat. 500), the United States accepted German bonds in a sum sufficient to liquidate all of the unpaid awards of the Commission. The bonds were to be paid in 103 installments covering a period expiring March 31, 1981. Germany defaulted after paying the third installment on March 30, 1931. Final Report of H. H. Martin, Acting Agent of the United States before the Mixed Claims Commission (1941), p. 95. By that time most of the 80% of the seized German property, which the United States had held for payment of the American awards, had already been released as required by the Settlement of War Claims Act. 93 Cong. Rec. 9289. In order to cut off a still further depletion of that property, the Harrison Resolution of June 27, 1934 (48 Stat. 1267), directed that all further payments under the Settlement of War Claims Act, insofar as it called for payments to German nationals, should be postponed so long as Germany remains in default.

Because of Germany's default, the balance in the Special Account was insufficient to make further payments on the Commission's awards.[5] However,

[5] The Act of August 6, 1947 (61 Stat. 789), provided for the building up of the Special Account by transferring to it, from the Alien Property Trust Fund, about $8,000,000 of seized German World War I property, which would have been returnable to its former German owners but for the Harrison Resolution. House Report No. 973, 80th Cong., 1st sess., p. 2; Senate Report No. 679, 80th Cong., 1st sess., p. 2.

despite that default, all but 451 of the 7,025 awards made by the Mixed Claims Commission on claims of American nationals arising out of World War I have been paid in full. Those claims paid in full include all awards on account of death or personal injury as well as all property damage claims of $100,000 or less. The 451 partially-paid awards represent property damage claims in excess of $100,000. (93 Cong. Rec. 9288.)

ARGUMENT

Petitioners contend that the awards of the Mixed Claims Commission resulted in a trust of which Germany was the settlor, the United States the trustee and petitioners the beneficiaries. They further argue that the United States violated that "trust" when it failed to apply German property seized during World War II to the payment of their awards. Finally it is urged that the alleged breach of trust constitutes a tort, actionable under the Federal Tort Claims Act. These arguments were urged upon, and rejected by, both courts below. That rejection, we submit, was plainly correct and does not warrant further review by this Court.

1. The conclusive answer to petitioners' trust-creation theory is that it is "impossible to hold the United States to be a trustee for anyone when it receives a sum of money from a foreign government, paid in pursuance of a treaty, for the satisfaction of claims of American citizens against such

government * * *." *Great Western Insurance Co.* v. *United States,* 19 C. Cls. 206, 217, affirmed on other grounds, 112 U. S. 193; cf. *Angarica* v. *Bayard,* 127 U. S. 251, 259; Koessler, *Government Espousal of Private Claims Before International Tribunals,* 13 U. of Chi. L. Rev. 180, 182 (1946). Well-settled principles of international law and the provisions of the Settlement of War Claims Act of 1928, which created the German Special Deposit Account, bring that impossibility into sharp focus in the instant case.

Since foreign governments may not without their consent be subjected to suits in the courts of the United States, the claims of American nationals against such governments may be prosecuted "not by suit in the courts, as of right, but by diplomacy, or, if need be, by war" *United States* v. *Dickelman,* 92 U. S. 520, 524; *Frelinghuysen* v. *Key,* 110 U. S. 63, 72; *The Exchange,* 7 Cranch 116. Only with the consent of the government involved will a claim on behalf of a national of one sovereign be allowed to proceed against another sovereign. See *United States* v. *Dickelman,* 92 U. S. 520, 524; *LaAbra Silver Mining Co.* v. *United States,* 175 U. S. 423, 455-463.

In the orderly conduct of its foreign relations it is obvious that a Government must be allowed to exercise its discretion as to whether it should espouse the claim of one of its nationals against a foreign government. Jessup, *A Modern Law of Nations* (1948), p. 98. When it does espouse a claim,

as the United States did when it provided for the creation of the Mixed Claims Commission and presented to that Commission the claims of its nationals, it makes those claims "its own." *Boynton* v. *Blaine,* 139 U. S. 306, 323. As this Court pointed out in *Z. and F. Assets Corp.* v. *Hull,* 311 U. S. 470, 487, "the claims to be considered by the [Mixed Claims] Commission were only those sponsored and presented by the United States against Germany. They were presented as claims of the United States, the national claimants themselves having no standing save as they were represented by the United States." Moreover, not only do the espoused claims themselves become those of the Government, but the funds received by the United States, in payment, are property of the United States until payment is made to the private claimants. *Williams* v. *Heard,* 140 U. S. 529, 537-538. Although the United States is under a "moral obligation" to make payment, "no individual claimant had, as a matter of strict legal or equitable right, any lien upon the fund awarded, nor was Congress under any legal or equitable obligation to pay any claim out of the proceeds of that fund." *Williams* v. *Heard, supra.*

The Settlement of War Claims Act of 1928, in creating the German Special Deposit Account, fully recognized this lack of legal or equitable ownership on the part of individual claimants and, far from establishing any private rights in those claimants, specifically prohibited the assumption by the

United States of any liability to them (R. 16A); Section 2(h), Appendix, *infra*, pp. 24-25. The funds in that account have accordingly been held to be under the absolute ownership of the United States. *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 120-124; *Drier* v. *United States*, 108 C. Cls. 487, 490. This absolute ownership on the part of the United States precludes, of course, the existence of any trust in favor of the individual claimants.

2. Even assuming the creation of a trust to benefit American owners of property seized by Germany during World War I, the record here shows no violation of that trust. Its *res* would have had to be either the monies retained under the Settlement of War Claims Act of 1928 or those received from Germany under the Debt Funding Agreement of 1930 (*supra*, pp. 8-9), *i.e.*, the payments earmarked for the satisfaction of Mixed Claims Commission's awards. In none of the complaints in this case, however, is there any allegation that these funds were not applied to the satisfaction of those awards.

Petitioners' assumption that the trust *res* consists of German property sequestered by the United States during World War II is completely unfounded. Certainly, not a syllable in the Settlement of War Claims Act of 1928, or in the Debt Funding Agreement, would warrant allocating alien property seized during World War II for the purpose of indemnifying petitioners' World War I

damages. That such an allocation was never intended by Congress is made further apparent by its rejection of prior attempts by World War I claimants to be paid out of the World War II funds. See Memoranda and discussion on "Indebtedness to American Nationals on World War I Adjudicated Awards of the Mixed Claims Commission," pp. 46-56, 138-157, Hearings before the Senate Committee on the Judiciary on H. R. 4044, 80th Cong., 2d sess. In fact, at those hearings, counsel for the World War I claimants specifically admitted that, apart from a small balance of funds left over from *World War I,* his clients have no claim to "any other funds now in the hands of the Alien Property Custodian." *Id.* at p. 157. Even more significant is the fact that when Congress enacted H. R. 4044 into the War Claims Act of 1948 (Public Law 896, 80th Cong., 2d sess.), it set up a comprehensive scheme for the disposition of property seized during World War II but made absolutely no provision for an allocation of any of that property to the satisfaction of World War I claims.

3. Finally, the language of the Federal Tort Claims Act and its express exceptions make it obvious that that Act may not be here applied even if the breach of a trust relationship is assumed.

a. The type of damage for which the United States assumed liability under the Federal Tort Claims Act is "damage to or loss of property or * * * personal injury or death". Section 410(a),

Appendix, *infra,* pp. 19-20. This language relates to the ordinary common law tort resulting from trespass, and connotes physical damage. It is consistent with the title of the Act which refers only to "tort claims." The Act's legislative history also shows that it was intended to encompass common law tort claims only. Thus, the purpose of the contemplated legislation was stated to be to allow suit "against the Government in respect to any common law tort." It was further stated that the "existing exemption in respect to common law torts appears incongruous. Its only justification seems to be historical. With the expansion of governmental activities in recent years, it becomes especially important to grant to private individuals the right to sue the Government in respect to such torts as negligence in the operation of vehicles." House Report No. 2428 on H. R. 7236, 76th Cong., 3d sess., pp. 2-3. See also Senate Report 1196 on S. 2221, 77th Cong., 2d sess., p. 5.

It is well-settled that the beneficiary of a trust may not maintain an action at law in tort against the trustee for breach of trust. 2 Scott, *Trusts,* Sec. 197.1 (1939). His remedies against the trustee are traditionally equitable. *McKee* v. *Lamon,* 159 U. S. 317, 322. He may sue for the specific enforcement of the trustee's duties, seek to enjoin the trustee from violating the trust, or institute proceedings for the removal of the trustee and the appointment of a receiver to administer the trust. In the

few instances where the beneficiary may sue at law, he is restricted to an action for money had and received. *Carl Byoir and Associates* v. *Tsune-Chi Yu,* 112 F. 2d 885 (C. A. 2), certiorari denied, 311 U. S. 699; *Parker State Bank* v. *Pennington,* 9 F. 2d 966, 969 (C. A. 8); see Restatement, *Trusts,* Section 198. Since he may not, however, proceed at law in an action in tort, the Federal Tort Claims Act is, we submit, inapplicable.

b. At least one express exception in the Federal Tort Claims Act furnishes another, independent ground for its inapplicability to the claims here presented by petitioners. Section 421(e) expressly excludes "any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the EnemyAct, as amended." (Appendix, *infra,* p. 21). As pointed out above, pp. 7-8, the relief sought by petitioners is based on rights which they claim under the Settlement of War Claims Act of 1928. That Act specifically states that it is an amendment to the Trading with the Enemy Act. (45 Stat. 254, 268, 270, 271). That it means just what it says is evident from the concurring opinion of Mr. Justice Burton in *Markham* v. *Cabell,* 326 U. S. 404, 413, where the history of the Trading with the Enemy Act and its amendments are reviewed. The opinion points out that "later amendments [*i.e.,* of the Trading with the Enemy Act] emphasized this restriction of Section 9(e) to World War I, while

preserving the general and permanent character of Section 9(a)". 326 U. S. 404, 418. In a footnote to that quotation the "later amendments" are enumerated. Included in that enumeration is the Act of "March 10, 1928 (45 Stat. 254-279). This was the 'Settlement of War Claims Act of 1928.' It dealt expressly with World War I. It was concerned with such subjects as the 'Mixed Claims Commission' and 'The Tripartite Claims Commission.' *It amended the Trading with the Enemy Act in many details as to World War I claims and added many new provisions as to those claims".* 326 U. S. 404, 418-419, fn. 4. (Emphasis supplied).

c. In addition, the Federal Tort Claims Act authorizes the entry of judgments for claims against the United States for money only. Section 410(a), Appendix, *infra,* p. 19. These judgments are payable out of specific "appropriation Act(s)" especially passed for that purpose. 28 U. S. C. 2411, 28 U. S. C. 2517; and see Section 411, Federal Tort Claims Act, 60 Stat. 844. Here, however, petitioners seek payment by the respondent Secretary of the Treasury out of the German Special Deposit Account—a result obviously inconsistent with the Act.[6]

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[6] As far as the respondent Secretary of the Treasury is concerned, there is no allegation in any of the complaints that pursuant to Section 2(a) of the 1928 Act (Appendix, *infra,* p. 24) the Secretary of State has certified to the Secretary of the Treasury the portions of the Mixed Claims Commission awards here involved. Under the 1928 Act the Secretary of State alone has the authority to consider and

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH, 1950.

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pass upon the regularity and validity of the awards made by the Mixed Claims Commission for the statutory purpose of qualifying them for payment by the Secretary of the Treasury. In the absence of an allegation of certification by the Secretary of State, there is no basis upon which the Secretary of the Treasury could make payment of the award even were such a matter one where resort could be had to the courts. *Z. and F. Assets Corp.* v. *Hull*, 311 U. S. 470, 486-487.

APPENDIX

1. Sections 410, 420, 421 of the Federal Tort Claims Act (60 Stat. 842, 843-846)[7] provide in pertinent part:

> SEC. 410. (a) Subject to the provisions of this title, the United States district court for the district wherein the plaintiff is resident or wherein the act or omission complained of occurred, including the United States district courts for the Territories and possessions of the United States, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any claim against the United States, for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred. Subject to the provisions of this title, the United States shall be liable in respect of such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the United States shall not be liable for interest prior to judg-

[7] See footnote 1, *supra*, p. 3.

ment, or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the United States were a private litigant, except that such costs shall not include attorneys' fees.

(b) The judgment in such an action shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the Government whose act or omission gave rise to the claim. * * *

SEC. 420. Every claim against the United States cognizable under this title shall be forever barred, unless within one year after such claim accrued or within one year after the date of enactment of this Act, whichever is later, it is presented in writing to the Federal agency out of whose activities it arises, if such claim is for a sum not exceeding $1,000; or unless within one year after such claim accrued or within the year after the date of enactment of this Act, whichever is later, an action is begun pursuant to part 3 of this title. In the event that a claim for a sum not exceeding $1,000 is presented to a Federal agency as aforesaid, the time to institute a suit pursuant to part 3 of this title shall be extended for a period of six months from the date of mailing of notice to the claimant by such Federal agency as to the final disposition of the claim or from the date of withdrawal of the claim from such Federal agency pursuant to section 410 of this title, if it would otherwise expire before the end of such period.

SEC. 421. The provisions of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

* * * * *

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended.

* * * * *

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

* * * * *

2. The Agreement of August 10, 1922, between the United States and Germany, 42 Stat. 2200, provided:

The United States of America
and
Germany,

being desirous of determining the amount to be paid by Germany in satisfaction of Germany's financial obligations under the Treaty

concluded by the two Governments on August 25, 1921, which secures to the United States and its nationals rights specified under a resolution of the Congress of the United States of July 2, 1921, including rights under the Treaty of Versailles, have resolved to submit the questions for decision to a mixed commission and have appointed as their plenipotentiaries for the purpose of concluding the following agreement:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

Alanson B. Houghton, Ambassador Extraordinary and Plenipotentiary of the United States of America to Germany,

and

THE PRESIDENT OF THE GERMAN EMPIRE

Dr. Wirth, Chancellor of the German Empire,

Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

The commission shall pass upon the following categories of claims which are more particularly defined in the Treaty of August 25, 1921, and in the Treaty of Versailles:

(1) Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights and interests, including any company or association in which they are interested, within German territory as it existed on August 1, 1914;

(2) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to persons, or to property, rights and interests, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

(3) Debts owing to American citizens by the German Government or by German nationals.

* * * * *

ARTICLE VI

The two Governments may designate agents and counsel who may present oral or written arguments to the commission.

The commission shall receive and consider all written statements or documents which may be presented to it by or on behalf of the respective Governments in support of or in answer to any claim.

The decisions of the commission and those of the umpire (in case there may be any) shall be accepted as final and binding upon the two Governments.

ARTICLE VII

The present agreement shall come into force on the date of its signature.

IN FAITH WHEREOF, the above-named plenipotentiaries have signed the present agreement and have hereunto affixed their seals.

Done in duplicate at Berlin this tenth day of August 1922.

[SEAL] ALANSON B. HOUGHTON.
[SEAL] WIRTH.

3. Section 2 of the Settlement of War Claims Act of 1928 (45 Stat. 254) provides in pertinent part:

> SEC. 2. (a) The Secretary of State shall, from time to time, certify to the Secretary of the Treasury the awards of the Mixed Claims Commission, United States and Germany, established in pursuance of the agreement of August 10, 1922, between the United States and Germany (referred to in this Act as the "Mixed Claims Commission").
>
> (b) The Secretary of the Treasury is authorized and directed to pay an amount equal to the principal of each award so certified, plus the interest thereon, in accordance with the award, accruing before January 1, 1928.
>
> (c) The Secretary of the Treasury is authorized and directed to pay annually (as nearly as may be) simple interest, at the rate of 5 per centum per annum, upon the amounts payable under subsection (b) and remaining unpaid, beginning January 1, 1928, until paid.
>
> (d) The payments authorized by subsection (b) or (c) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe, but only out of the German special deposit account created by section 4, within the limitations hereinafter prescribed, and in the order of priority provided in subsection (c) of section 4.
>
> * * * * *
>
> (h) Nothing in this section shall be construed as the assumption of a liability by the United States for the payment of the awards of

the Mixed Claims Commission, nor shall any payment under this section be construed as the satisfaction, in whole or in part, of any of such awards, or as extinguishing or diminishing the liability of Germany for the satisfaction in full of such awards, but shall be considered only as an advance by the United States until all the payments from Germany in satisfaction of the awards have been received. Upon any payment under this section of an amount in respect of an award, the rights in respect of the award and of the claim in respect of which the award was made shall be held to have been assigned pro tanto to the United States, to be enforced by and on behalf of the United States against Germany, in the same manner and to the same extent as such rights would be enforced on behalf of the American national.

(i) Any person who makes application for payment under this section shall be held to have consented to all the provisions of this Act.

* * * * *

4. Section 4 of the Settlement of War Claims Act of 1928 (45 Stat. 260, as amended by the Act of August 6, 1947, 61 Stat. 789) provides:

SEC. 4. (a) There is hereby created in the Treasury a German special deposit account, into which shall be deposited all funds hereinafter specified and from which shall be disbursed all payments authorized by section 2 or 3, including the expenses of administration authorized under subsections (c) and (m) of section 3 and subsection (e) of this section.

(b) The Secretary of the Treasury is authorized and directed to deposit in such special deposit account—

(1) All sums invested or transferred by the Alien Property Custodian, under the provisions of section 25 of the Trading with the Enemy Act, as amended;

(2) The amounts appropriated under the authority of section 3 (relating to claims of German nationals);

(3) All money (including the proceeds of any property, rights, or benefits which may be sold or otherwise disposed of, upon such terms as he may prescribe) received, whether before or after the enactment of this Act, by the United States in respect of claims of the United States against Germany on account of the awards of the Mixed Claims Commission; and

(4) All money held in the Alien Property Trust Fund whose payment is restricted under the joint resolution entitled "Joint resolution to amend the Settlement of War Claims Act of 1928, as amended", approved June 27, 1934, other than property with respect to which the restrictions imposed by such joint resolution have been removed by the President prior to the enactment of this paragraph [August 6, 1947]. The Attorney General shall certify to the Secretary of the Treasury the amounts to be so deposited.

(c) The Secretary of the Treasury is authorized and directed, out of the funds in such special deposit account, subject to the provisions of subsection (d), and in the following order of priority—

(1) To make the payments of expenses of administration authorized by subsections (c) and (m) of section 3 or subsection (e) of this section;

(2) To make so much of each payment authorized by subsection (b) of section 2 (relating to awards of the Mixed Claims Commission), as is attributable to an award on account of death or personal injury, together with interest thereon as provided in subsection (c) of section 2;

(3) To make each payment authorized by subsection (b) of section 2 (relating to awards of the Mixed Claims Commission), if the amount thereof is not payable under paragraph (2) of this subsection and does not exceed $100,000, and to pay interest thereon as provided in subsection (c) of section 2;

(4) To pay the amount of $100,000 in respect of each payment authorized by subsection (b) of section 2 (relating to awards of the Mixed Claims Commission), if the amount of such authorized payment is in excess of $100,000 and is not payable in full under paragraph (2) of this subsection. No person shall be paid under this paragraph and paragraph (3) an amount in excess of

$100,000 (exclusive of interest beginning January 1, 1928), irrespective of the number of awards made on behalf of such person;

(5) To make additional payments authorized by subsection (b) of section 2 (relating to awards of the Mixed Claims Commission), in such amounts as will make the aggregate payments (authorized by such subsection) under this paragraph and paragraphs (2), (3), and (4) of this subsection equal to 80 per centum of the aggregate amount of all payments authorized by subsection (b) of section 2. Payments under this paragraph shall be prorated on the basis of the amount of the respective payments authorized by subsection (b) of section 2 and remaining unpaid. Pending the completion of the work of the Mixed Claims Commission, the Secretary of the Treasury is authorized to pay such installments of the payments authorized by this paragraph as he determines to be consistent with prompt payment under this paragraph to all persons on behalf of whom claims have been presented to the Commission;

(6) To pay amounts determined by the Secretary of the Treasury to be payable in respect of the tentative awards of the Arbiter, in accordance with the provisions of subsection (s) of section 3 (relating to awards for ships, patents, and radio stations);

(7) To pay to German nationals such amounts as will make the aggregate pay-

ments equal to 50 per centum of the amounts awarded under section 3 (on account of ships, patents, and radio stations). Payments authorized by this paragraph or paragraph (6) may, to the extent of funds available under the provisions of subsection (d) of this section, be made whether or not the payments under paragraphs (1) to (5), inclusive, of this subsection have been completed;

(8) To pay (A) the accrued interest payable under subsection (c) of section (2) (in respect of awards of the Mixed Claims Commission) and (B) after such interest has been paid in full, to pay amounts equal to the difference between the aggregate payments (in respect of awards of the Mixed Claims Commission) authorized by subsections (b) and (c) of section 2 and the amounts previously paid in respect thereof: *Provided,* That, for the purpose only of subsection (c) of section 2, the amounts payable under subsection (b) of section 2 and remaining unpaid shall be deemed reduced by the amount of any payments of interest hereafter made under clause (A) hereof;

(9) To pay into the Treasury as miscellaneous receipts the amount of the awards of the Mixed Claims Commission to the United States on its own behalf on account of claims of the United States against Germany;

(10) To pay the accrued interest payable under subsection (h) of section 3 (in respect of awards to German nationals);

(11) To make such payments as are necessary (A) to repay the amounts invested by the Alien Property Custodian under subsection (a) of section 25 of the Trading With the Enemy Act, as amended (relating to the investment of 20 per centum of German property temporarily withheld), (B) to pay amounts equal to the difference between the aggregate payments (in respect of claims of German nationals) authorized by subsections (g) and (h) of section 3 and the amounts previously paid in respect thereof. If funds available are not sufficient to make the total payments authorized by this paragraph, the amount of payments made from time to time shall be apportioned among the payments authorized under clauses (A) and (B), according to the aggregate amount remaining unpaid under each clause;

(12) To pay accrued interest upon the participating certificates evidencing the amounts invested by the Alien Property Custodian under subsection (a) of section 25 of the Trading With the Enemy Act, as amended (relating to the investment of 20 per centum of German property temporarily withheld);

(13) To make such payments as are necessary to repay the amounts invested by the Alien Property Custodian under subsection (b) of section 25 of the Trading With the Enemy Act, as amended (relating to the investment of the unallocated interest fund); but the amount payable under this para-

graph shall not exceed the aggregate amount allocated to the trusts described in subsection (c) of section 26 of such Act; and

(14) To pay into the Treasury as miscellaneous receipts any funds remaining in the German special deposit account after the payments authorized by paragraphs (1) to (12) have been completed.

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